



U.S. House of Representatives
Committee on Transportation and Infrastructure

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Admiral Thad Allen
Commandant, United States Coast Guard
US Coast Guard Headquarters
2100 2nd Street, SW
Washington DC, 20593

Dear Admiral Allen:

I am shocked to learn that the Coast Guard is not enforcing an important safety law that was enacted in 2006.

I authored that provision, Section 301 of the Coast Guard and Maritime Transportation Act of 2006 (P.L. 109-241), to amend the definition of "ferry" in order to include vessels on a regular schedule that transport passengers or vehicles on voyages of less than 300 miles, regardless of whether the passengers paid for their carriage.

I was prompted to address this issue to specifically address an issue raised subsequent to the tragic accident involving the Staten Island ferry ANDRE J. BARBERI that killed 11 passengers and injured 71. I learned while reviewing that tragedy that because the Staten Island ferries do not charge a fare they are not required to be inspected. Under the law then in effect the inspection requirement covered only vessels charging passengers a fare. And, while the ANDREW J. BARBERI was inspected by the Coast Guard, other similar vessels were not and apparently still are not inspected.

On September 19, 2008 the master of the M/V CAPE POINT (a passenger ferry operated by the North Carolina Department of Transportation) suffered an apparent heart attack and died at the helm. Fortunately one of the passengers, a Mr. Jason Bosley, a trained Mississippi pilot, was able to take the helm. Later, another North Carolina ferry transferred a pilot familiar with the area to the CAPE POINT. The 60 passengers and 26 vehicles were safely transported to their destination.

Press reports several weeks after the incident indicated that, in addition to the master, two able-bodied seaman were required to be onboard the vessel, and that the Coast Guard

"recommends" that one be capable of taking over the operation of the vessel and be designated as "mate."

Upon learning of this casualty and in order to determine the required manning level on the vessel, I directed my staff to request from the Coast Guard a copy of the Certificate of Inspection (COI), and was advised:

The M/V CAPE POINT does not have a current Certificate of Inspection (COI). The vessel was formerly inspected by the Coast Guard and voluntarily carried a COI. The North Carolina Department of Transportation surrendered the vessel's COI on March 17, 1997. The M/V CAPE POINT is not subject to inspection under Title 46 U.S. Code Section 3301 because it does not carry "passengers for hire" (e.g., passengers for whom consideration is contributed as a condition of carriage).

My staff questioned your staff regarding this apparent discrepancy with current law, and found a distressing lack of attention to statutory changes that were enacted over two years ago.

First, upon reconsideration your staff stated that:

M/V CAPE POINT is a vessel of over 100 gross tons that provides transportation for passengers and vehicles between places that are not more than 300 miles apart, meeting the definition of "ferry" in Sec 301 of P.L. 109-241. As M/V CAPE POINT is a ferry carrying a passenger, it is a "passenger vessel" under Sec. 301 and is required to be inspected by the U. S. Coast Guard pursuant to Title 46 U.S. Code Chapter 33.

In response to a question about how many other passenger ferries are currently operating (not carrying 'passengers for hire') without a COI, we learned that:

The Coast Guard estimates the population of vessels affected by Sec. 301 Public Law 109-241 to be approximately 67. Twenty-nine of those vessels currently hold valid Certificates of Inspection issued pursuant to various agreements. Remaining vessels still must come into compliance with vessel inspection regulations.

Finally, responding to a follow-up question about the process used to advise Coast Guard field units about changes to the statute that impact the inspection status of vessels operating in their Sector, we were advised that:

Many field units received informal notification of the law change in 2006. More recently, all field units (Sectors/Marine Safety Units) were advised of the definitional change. Comprehensive guidance is currently being developed for subsequent distribution to field units.


It is totally unacceptable that more than two years after the adoption of an amendment to the Marine Safety Statutes (46 U.S.C. 2101) designed to ensure that all vessels carrying passengers as

a public carrier are inspected by the Coast Guard at least 38 ferries that carry thousands of passengers are operating without being subjected to Coast Guard safety inspections and Coast Guard manning requirements.

Apparently Coast Guard Headquarters failed to provide guidance promptly to its Marine Safety units on a significant change in the law that affects the safety of at approximately 70 vessels all of which by now should have Certificates of Inspection. This lack of attention to public safety is another indication of a lack of continuity and expertise in the Coast Guard's Marine Safety program. This situation again illustrates a disturbing lack of attention to public safety by all levels of the Coast Guard's Marine Safety Program – demonstrating yet again the need for legislation that will provide this vital public safety program with a solid statutory foundation.

I insist that you give the highest priority to correcting this deficiency by ordering the inspection of all vessels covered by Section 301, and ensuring that these vessels are being manned and operated by Coast Guard licensed and documented personnel as required existing law. I would also like a copy of the "comprehensive guidance [that] is currently being developed for subsequent distribution to field units" as soon as this document is available.

Sincerely,


James L. Oberstar, M.C.
Chairman